IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 168 OF 2004.

Mr. Javed A. Bhat.
Presently lodged in
Judicial Lock-Up,
Mapusa, Bardez, Goa. .... Applicant.

Versus

Union of India,
As represented by
Mr. M.P. Vaz,
Suptd. Of Customs & Central
Excise. .... Respondent.

Shri J.P. D'Souza and Ms. C. Collasso, Advocates for the Applicant.

Shri J.S. Vaz, Special Public Prosecutor for the Respondent.

CORAM: N. A. BRITTO, J.

DATE: 20TH AUGUST, 2004.

O R D E R :

Heard Shri J.P. D'Souza, the learned counsel on behalf of the Applicant-Accused and Shri J.S. Vaz, the learned Special Public Prosecutor on behalf of the Respondent. The Applicant is being tried for offences punishable under Sections 20, 21 and 22 of the N.D.P.S. Act 1985 by the learned Special Judge, N.D.P.S. Court at Mapusa in Special Criminal Case No.13/2003.

2. The allegation against the applicant is that on the basis of

specific information, the applicant was arrested on 14.1.2003 as he was found in possession of 85 gms. of ganja, 380 gms. of hashish, 38 gms. of brown sugar, 8.4 gms of ecstasy (71 tablets) and 6 gms. of cocaine. The charge against the applicant was framed on or about 18.8.2003 and trial against him is pending, though it appears initially it was delayed for some time because of non-receipt of the report of CFSL, Hyderabad.

3. The applicant did approach this Court for bail earlier, by his application dated 28.2.2003 which was dismissed as withdrawn by this Court, by Order dated 25.3.2003. Thereafter the applicant again approached this Court, by application dated 22.4.2003 which was dismissed by this Court by Order dated 5.5.2003 stating that the allegations against the applicant were serious as he was found in possession of assorted drugs of varying quantities and therefore was not entitled to bail. This Court also observed that the apprehension of the prosecution that the accused being a Kashmiri, who had no roots in Goa, and therefore would abscond, could not be said to be unfounded.

4. Thereafter the applicant again appears to have approached the learned Special Judge, N.D.P.S. Court, Mapusa by another application which has been rejected by Order dated 27.7.2004.

5. The grant of bail has been opposed by the respondent by reply dated 18.8.2004 in which it is, inter alia, stated that the case against the

applicant is of serious nature and that the applicant was a dealer in the said drugs. It is also stated that in similar cases a number of accused persons from the State of the applicant have jumped bail and are not traceable.

6. Shri D'Souza, on behalf of the applicant, has submitted that the alleged offence against the applicant, at the most will be punishable with imprisonment for a period of ten years and therefore ordinarily the applicant would be entitled to bail under the Code of Criminal Procedure, 1973. Shri D'Souza has further submitted that in view of the said position and considering that the trial against the applicant is being delayed, the applicant be admitted to bail.

7. On the other hand, Shri Vaz, the learned Special Public Prosecutor has submitted that the applicant was found in possession of assorted drugs and that the case against the applicant is serious. It is also submitted by Shri Vaz that in similar cases persons like the applicant have jumped bail in the past and therefore they apprehend that the applicant will not be different. Shri Vaz has placed reliance on a decision of this Court in the case **of Bakul N. Shah v. The State of Maharashtra, N.C.P. and another** (1995 (2) Bom. C.R. 557). This was a case where the bail was rejected because the trial had commenced and earlier bail applications were also rejected.

8. As already stated, the accused-applicant has been denied bail earlier by this Court on the merits of the case. The submission that the accused would be entitled to bail under the provisions of the Code of Criminal Procedure, 1973, the offence alleged against the accused being punishable at the most with ten years of imprisonment cannot be accepted. A person accused of a non-bailable offence cannot claim bail as of right and the question is always one of discretion of the Court which has got to be exercised on a totality of facts and circumstances of a given case. The discretion has got to be exercised also, considering the larger interest of the society. As far as the trial of the case is concerned, it is already in progress and considering the facts of this case, the accused would not be entitled to bail because the trial has been delayed. The possibility of the accused absconding like others before him was one of the considerations why bail was not granted to the accused earlier. The label sought to be given to the accused that he was a dealer in the said drugs, prima facie, sticks to the accused and therefore the probability of the accused repeating his activity if bailed out has also got to be taken into consideration.

9. In my view the accused would not be entitled to bail at this stage. The facts and circumstances in which bail was granted to one Amit Dakar in Criminal Misc. Application No.116/2004 and Bhagwat Chote Singh in Criminal Misc. Application No. 66/2004 by Orders of this Court dated 12.5.2004 and 2.4.2004 respectively are not relevant as far

as the facts of this case are concerned.

Application dismissed.

N. A. BRITTO, J.

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